

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
: UNITED STATES OF AMERICA, : 12-MJ-3212  
: :  
: Plaintiff, : 500 Pearl Street  
: v. : New York, New York  
: :  
: LEBYA, et al., : December 20, 2012  
: :  
: Defendants. :  
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR ARRAIGNMENT/BAIL  
BEFORE THE HONORABLE SARAH NETBURN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: EDWARD B. DISKANT, ESQ.  
U.S. Attorney Office, SDNY  
One Saint Andrew's Plaza  
New York, New York 10007

For Defendant/Reyes-Arias: MARGARET SHALLEY, ESQ.

For Defendant/Leyva: JOSHUA DRATEL, ESQ.

Court Transcriber: SHARI RIEMER  
TypeWrite Word Processing Service  
211 N. Milton Road  
Saratoga Springs, NY 12866

Proceedings recorded by electronic sound recording,  
transcript produced by transcription service

1 THE CLERK: The matter of United States v. Rogelio  
2 Lebya and Arcadio Reyes-Arias.

3 Counsel, please state your name for the record.

4 MR. DISKANT: Good evening, Your Honor. Edward  
5 Diskant for the Government and with me at counsel table is  
6 Special Agent Tony Reo [Ph.] of the FBI.

7 THE COURT: Good evening.

8 MS. SHALLEY: Good evening, Your Honor. Margaret  
9 Shalley for Arcadio Reyes-Arias.

10 MR. DRATEL: Good evening, Your Honor. Joshua Dratel  
11 for Rogelio Lebya. It's actually misspelled. L-E-Y-V-A.

12 THE COURT: L-E-Y-V-A. That's what I have the  
13 Pretrial Services Report. Thank you.

14 Can I have a date and time of the arrest?

15 MR. DISKANT: Yes. Both men were arrested this  
16 morning at approximately 7:30 a.m.

17 THE COURT: Please be seated. 7:30 you said?

18 MR. DISKANT: Yes, Your Honor.

19 THE COURT: Before we begin I understand that counsel  
20 has consented to doing this together even though we have two  
21 different complaints.

22 MS. SHALLEY: Yes, Your Honor.

23 MR. DRATEL: Yes, Your Honor.

24 THE COURT: Any objection? Okay. Thank you. I  
25 appreciate that.

1           Gentlemen, I'm Judge Netburn. The purpose of today's  
2 proceeding is to advise you of certain rights that you have,  
3 inform you of the charges against you, consider whether counsel  
4 should be appointed for you and decide under what conditions if  
5 any you should be released.

6           I'm now going to explain certain constitutional  
7 rights that you have. You have the right to remain silent.  
8 You are not required to make any statements. Even if you have  
9 made any statements to the authorities you do not need to make  
10 any further statements. Any statement that you do make can be  
11 used against you.

12           You have the right to be released either  
13 conditionally or unconditionally pending trial unless I find  
14 that there are no conditions that would reasonably assure your  
15 presence in court and the safety of the community.

16           You have the right to be represented by an attorney  
17 during all court proceedings including this one and during all  
18 questioning by the authorities. If you cannot afford an  
19 attorney I shall appoint one today to represent you.

20           Mr. Leyva, I have here an affidavit that you signed  
21 under the penalty of perjury. Please be aware that any false  
22 statements contained in this affidavit can result in a  
23 prosecution for perjury.

24           Based on the information contained in this affidavit  
25 I'm approving the appointment counsel, Mr. Dratel.

1 MR. DRATEL: Thank you, Your Honor.

2 THE COURT: Ms. Reyes-Arias, Mr. Reyes-Arias, excuse  
3 me. Am I saying that correctly, Reyes-Arias?

4 I have before me a financial affidavit that you  
5 signed under the penalty of perjury. Please be aware that if  
6 you submit any false statements in this affidavit you can be  
7 prosecuted for perjury.

8 Based on the information contained in this affidavit  
9 I'm approving the appointment of Ms. Shalley as counsel in this  
10 matter.

11 MS. SHALLEY: Thank you.

12 THE COURT: Mr. Reyes-Arias, I have before me a one  
13 count complaint charging you with conspiracy to commit  
14 healthcare fraud. Counsel, have you had an opportunity to  
15 review this complaint with our client?

16 MS. SHALLEY: Yes, I have with a Spanish interpreter  
17 and we waive the public reading.

18 THE COURT: Mr. Leyva, I have before me a complaint  
19 which charges you with one count of conspiracy to commit  
20 healthcare fraud. Counsel, have you had an opportunity to  
21 review this complaint with your client?

22 MR. DRATEL: Yes, Your Honor, with a Spanish  
23 interpreter and waive the public reading as well.

24 THE COURT: Thank you. Gentlemen, you have the right  
25 to a preliminary hearing at which the Government will have the

1 burden of establishing that there is probable cause to believe  
2 that a crime has been committed and that you are the person who  
3 committed it.

4           If you are in custody you have the right to have that  
5 preliminary hearing within 14 days. If you are not in custody  
6 you have the right to have the preliminary hearing held within  
7 21 days. A preliminary hearing will not however be held if  
8 before the date it is scheduled you are indicted by a Grand  
9 Jury or an information is filed against you by the Government.  
10 I will determine a preliminary hearing date after I hear from  
11 the parties on detention or bail.

12           MR. DISKANT: Your Honor, the Government seeks  
13 detention with respect to both defendants.

14           THE COURT: With regard to both, okay. Ms. Shalley,  
15 do you want to begin?

16           MS. SHALLEY: Your Honor, we consent to an order of  
17 detention until we arrive at a viable bail package.

18           THE COURT: Okay. Thank you.

19           MR. DRATEL: Your Honor, before I begin -- well, let  
20 me do the detention part first. The Pretrial Services Report  
21 recommends conditions sufficient to satisfy the criteria for  
22 bail. So I think the Court should impose those kinds of  
23 conditions. Mr. Leyva has a green card. He has family in the  
24 United States. He has a sister and a brother here. I've tried  
25 to reach the sister [inaudible] voice mail but he works at --

1 he is employed at a grocery store that his father owns and he  
2 also has court ordered child support that he obviously is able  
3 to make because he works and because he earns a living.

4           Given the standard which is that the Court has to  
5 find no conditions in order to detention I don't think it's  
6 appropriate in this case because Pretrial Services has found  
7 that there are conditions. Regardless of whether he can meet  
8 those conditions today or tomorrow or next month. Setting  
9 those conditions will certainly give us a [inaudible] satisfied  
10 [inaudible] and I think that's what's appropriate in this case  
11 [inaudible] Pretrial Services Report [inaudible] in this case.

12           THE COURT: Does your client own property?

13           MR. DRATEL: No, Your Honor.

14           THE COURT: Remind me what family members live in the  
15 area.

16           MR. DRATEL: A brother and a sister. His sister, Your  
17 Honor.

18           THE COURT: Only a sister?

19           MR. DRATEL: Only a sister.

20           THE COURT: Where does she live?

21           MR. DRATEL: In Newark. In Newark where he lives.

22           THE COURT: Mr. Leyva, how often do you see your  
23 sister? How often do you see your sister?

24           (Through Spanish interpreter)

25           THE DEFENDANT: I see her every week like two or three

1 times.

2 THE COURT: Where does your child live?

3 MR. DRATEL: He has five children.

4 THE COURT: Five children.

5 THE DEFENDANT: Five, yes.

6 THE COURT: Where do they live?

7 THE DEFENDANT: In Newark.

8 THE COURT: How often do you see your children?

9 THE DEFENDANT: Excuse me?

10 THE COURT: How often do you see your children?

11 THE DEFENDANT: How do I get along with my children?

12 MR. DRATEL: No, no.

13 THE COURT: How often do you see them?

14 THE DEFENDANT: Oh, well I see them twice a week,  
15 three times a week. It depends because they don't live far  
16 away from me.

17 THE COURT: Are they all United States citizens?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Is your sister employed?

20 THE DEFENDANT: She's a homemaker.

21 THE INTERPRETER: Your Honor, may I clarify?

22 THE COURT: Yes.

23 THE DEFENDANT: Yes, homemaker. Yes, she takes care  
24 of everything legal.

25 THE COURT: So she is employed?

1 THE DEFENDANT: She is employed.

2 THE COURT: Counsel, does your client have a prior  
3 criminal arrest record?

4 MR. DRATEL: No, I don't believe he has a record.

5 THE DEFENDANT: Nothing, Your Honor.

6 THE INTERPRETER: No, ma'am.

7 THE COURT: Can I hear from you in response?

8 MR. DISKANT: Yes, Your Honor. Thank you. The  
9 Government seeks detention primarily on the basis of risk of  
10 flight. The defendant is a citizen of the Dominican Republic.  
11 His parents are in the Dominican Republic. The information we  
12 have leads us to believe his parents may have considerable  
13 assets and indeed the defendant reported that his parents own  
14 the store that he appears to be working in and residing in and  
15 therefore presents some risk of flight.

16 He has no assets in this country whatsoever and  
17 therefore even were a bail package to be set he would have no  
18 way of securing it in any meaningful fashion. His family ties  
19 in the community are a bit of a mystery to the Government.  
20 Again, he --

21 THE COURT: Please speak up.

22 MR. DISKANT: I'm sorry, yes. They're a bit of a  
23 mystery to the Government. If you look at what he told  
24 Pretrial he says that his sole family is an aunt with who he  
25 maintains no contact. So I presume -- I'm a little confused



1 about where the sister fits in. The Government's information  
2 is that the defendant lives in an otherwise abandoned building  
3 in which he was found this morning. So Pretrial Services'  
4 recommendation that home detention or home monitoring be  
5 imposed might pose some difficulties on that front.

6 The defendant's sole employment is in a store that  
7 the Government believes he was using as a front of the drug  
8 conspiracy that is charged in the complaint.

9 So for all of those reasons the Government really  
10 doesn't see any viable bail package here which is the primary  
11 reason that we're seeking detention at this time.

12 THE COURT: Thank you. Mr. Dratel, is your client  
13 have a residence or is he living as counsel just represented in  
14 an abandoned warehouse?

15 MR. DRATEL: If I may speak with him, Your Honor. It  
16 is an apartment building, Your Honor. It's just abandoned.

17 THE COURT: It is an apartment building. It's just --

18 MR. DRATEL: Abandoned. It's not a warehouse.

19 THE COURT: It's an abandoned apartment building?

20 MR. DRATEL: Correct.

21 THE COURT: Okay.

22 [Pause in proceedings.]

23 THE COURT: Ms. Shalley, you could probably wrap up  
24 with your client if you'd like.

25 MS. SHALLEY: Yes.

1 THE COURT: Do you want to do that?

2 MS. SHALLEY: Yes.

3 THE COURT: When you like me to set a preliminary  
4 hearing?

5 MS. SHALLEY: I waive to the thirtieth day.

6 THE COURT: That would be January 22<sup>nd</sup>.

7 MS. SHALLEY: My client has asthma.

8 THE COURT: He has asthma?

9 MS. SHALLEY: Yes.

10 THE COURT: I'll indicate.

11 MS. SHALLEY: Thank you.

12 THE COURT: You're welcome.

13 MR. DRATEL: Your Honor, Mr. Leyva lives above the  
14 bodega. So clearly it's not an abandoned building.

15 [Inaudible] is on the ground floor. The building is undergoing  
16 repairs but his apartment is habitable and he lives in it.

17 THE COURT: Do you know if it has phone service? Land  
18 line phone service.

19 THE DEFENDANT: I do have it but [inaudible].

20 MR. DRATEL: I believe what he said, Your Honor, is  
21 there may be some connection to the bodega system but yes,  
22 there is --

23 [Pause in proceedings.]

24 MR. DRATEL: Yes, Your Honor.

25 THE COURT: If necessary would he be able to stay at

1 his sister's house?

2 THE DEFENDANT: Yes.

3 MR. DRATEL: Yes, Your Honor.

4 THE COURT: Anything further from the Government?

5 MR. DISKANT: Yes, Your Honor. To the extent the  
6 Court is inclined to grant a bail package the Government would  
7 request either a significant posting of cash, something in the  
8 ballpark of five to \$10,000.00 or the signature of a number of  
9 financially responsible people and would ask -- in addition to  
10 his sister and would ask that all conditions be met before any  
11 release.

12 MR. DRATEL: [Inaudible] in terms of bail conditions  
13 that set [inaudible] possibility [inaudible].

14 MR. DISKANT: If I may, Your Honor, the entire point  
15 here is that the defendant has no assets in this jurisdiction  
16 or in New Jersey for that matter. So something meaningful to  
17 require him to return the Government would submit is required  
18 on these facts. Whether he can meet them or not is a different  
19 story.

20 MR. DRATEL: I'm just saying that --

21 THE COURT: I think I've heard everybody on this.

22 Based on my review of the complaint and the Pretrial  
23 Services Report I am going to impose the following conditions  
24 for Mr. Leyva's release. He must satisfy these conditions  
25 before he will be released.

1           The posting of \$100,000.00 bond secured by \$5,000.00  
2 and two financially responsible people as co-signers, one of  
3 whom is to be his sister. If he is able to satisfy those  
4 conditions for his release he will be under strict Pretrial  
5 supervision. He will be under home detention at his sister's  
6 home and there will be location monitoring. He will be  
7 permitted to leave the home for employment, medical  
8 appointments and to visit counsel. His travel shall be  
9 restricted to the Southern District of New York, the Eastern  
10 District of New York and the District of New Jersey.

11           Mr. Leyva, I am detaining you until the condition of  
12 \$5,000.00 cash or security of \$100,000.00 bond is posted as  
13 well as two co-signers for the bond. If you're unable to raise  
14 the amount of money necessary to post bail you will be detained  
15 not because you cannot afford the amount of money but because  
16 without that amount of money I cannot reasonably assure your  
17 appearance in court.

18           I'll add, I think I may not have added that he is  
19 surrender his passport and any other travel documents.

20           Mr. Leyva, if you are able to satisfy these  
21 conditions and are released I may warn you that if you fail to  
22 appear in court or if you violate any of the conditions of your  
23 release a warrant will be issued for your arrest. You and  
24 anyone who sign the bond will be responsible for paying its  
25 full amount, that is \$100,000.00, and you may be charged with a

1 separate crime of bail jumping. In addition, if you commit an  
2 offense while you're released in addition to the sentence  
3 imposed for that offense you will be sentenced for an  
4 additional term of not more than 10 years if the offense is a  
5 felony and not more than one year if the offense is a  
6 misdemeanor. This term of imprisonment will be executed after  
7 any other sentence of imprisonment is completed.

8 When shall we set for the preliminary hearing?

9 MR. DRATEL: Waive to the thirtieth day, Your Honor.

10 THE COURT: That will be January 22<sup>nd</sup>.

11 Anything further?

12 MR. DISKANT: Not from the Government, Your Honor.

13 MR. DRATEL: No, Your Honor, thank you.

14 THE COURT: Thank you.

15 \* \* \* \* \*

16

17

18

19

20

21

22

23

24

25

1 I certify that the foregoing is a court transcript from an  
2 electronic sound recording of the proceedings in the above-  
3 entitled matter.

4  
5 \_\_\_\_\_  
6 Shari Riemer

7 Dated: January 14, 2013  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25